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## FISCAL IMPACT REPORT

SPONSOR: Lundstrom DATE TYPED: 01/29/01 HB 80  
 SHORT TITLE: Individual Development Account Pilot Program SB \_\_\_\_\_  
 ANALYST: Dunbar

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02 & FY 03	FY01	FY02		
	\$ 150.0			Rec	GF

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB259

### SOURCES OF INFORMATION

Human Services Department  
 Attorney General's Office

### SUMMARY

#### Synopsis of Bill

Appropriates \$150.0 from the general fund to the local government division of DFA for expenditure in FY 2002 and 2003 for a pilot program encouraging very low-income individuals to begin individual development accounts in Cibola, San Juan and McKinley counties.

#### Significant Issues

Individual Development Accounts (IDAs) are bank accounts that are set up to accumulate funds for certain limited uses, usually with limitations on the conditions under which withdrawals can be made. IDAs are established in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, under the section that creates the **Temporary Assistance for Needy Families (TANF) program**. IDAs are also established under the **New Mexico Works Act (NMWA) at Sec. 27-2B-10, NMSA 1978**. New Mexico Works (NMW) is the state TANF program. State statutory language closely follows federal language. Earned income deposited in approved IDAs is disregarded in determining NMW payment amount and income eligibility.

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To be disregarded by New Mexico Works:

- The IDA must be organized as a trust in the United States;
- Only the earned income of a participant can be deposited into the IDA;
- Recipient contributions to the IDA may be matched by or through a qualified entity; and
- The IDA may be established for only certain purposes; (1) post secondary education of a dependent child; (2) purchase of a principal residence for a first time homebuyer; or, (3) business capitalization.

NMWA further requires that a participant must first establish a savings account not to exceed \$1,500, and that if the declared purpose of the IDA is to purchase a principal residence for a first time home buyer, the maximum amount used for this purpose is limited to \$1,500.

Funds in an approved IDA are disregarded in NMWA, provided that the IDA is established and funded in accordance with NMWA and federal TANF requirements. With respect to asset limitations, IDAs are disregarded in the Food Stamp program but are countable in some Medicaid programs.

### **FISCAL IMPLICATIONS**

HB 80 appropriates \$150.0 from the general fund for FY 02 and FY 03. Any unexpended or unencumbered balance remaining at the end of fiscal year 2003 shall revert to the general fund.

In the NMW cash assistance program, a deduction from earned income is allowed each month equal to the amount the NMW recipient deposits into the IDA. Only earned income can be deposited into the account. This deduction decreases the amount of countable earned income used to determine eligibility and benefit amount for NMW cash assistance. This results in increased cash assistance expenditures from the TANF block grant. The cost of IDAs in terms of NMW payments is likely to be negligible.

State funds used to establish IDAs for TANF recipients would be countable as state maintenance of effort (MOE) funds.

### **ADMINISTRATIVE IMPLICATIONS**

The administrators of the pilot program at DFA would need to know about NMWA statutory and regulatory provisions in order to assist NMWA recipients in establishing IDAs that would not affect adversely NMWA eligibility or payment.

If the bill is amended to include only those individuals eligible for the NM WORKS Act, the funds should be appropriated to HSD.

### **OTHER SUBSTANTIVE ISSUES**

The bill does not specify that the participants in the pilot program must be NMW cash assistance recipients. The bill does limit participation to those with very low incomes. Low income is not defined and could create eligibility problems for the program.

The term "individual development account" used in the bill needs to be defined or explained

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The bill does not reference the only relevant statutory authority, § 27-2B-10 (“Individual Development Accounts”) New Mexico Works Act. This section was enacted in conformity with the federal statute, the Personal Responsibility and Work Opportunity and Work Opportunity Reconciliation Act of 1996 (PRWORA), which permits individual development accounts (“IDAs”) by TANF/New Mexico Works participants.

The Attorney General’s Office(AGO) indicates that to the extent it amounts to conferring a gift or grant on private persons, the bill implicates the antidonation clause of N.M. Const. art. IX, § 14. That clause prohibits the state and counties from making any donation, grant or gift to private persons or entities without sufficient consideration in return. The bill restricts the benefits bestowed to “very low-income individuals” in the specified counties. This suggests that the benefits may fall under an exception to the antidonation clause that allows the state and counties to provide “for the care and maintenance of sick and indigent persons.” § 14(A). If the benefits provided under the bill are intended to provide for the “care and maintenance” of indigent persons, then the bill may be permissible under the antidonation clause.

AG also states that the bill also implicates the equal protection clauses of the Fourteenth Amendment to the U.S. Constitution and Article II, Section 18 of the New Mexico Constitution. It may also raise an issue under N.M. Const. art. IV, § 26, which, in pertinent part, prohibits the legislature from granting to any “person, any rights, franchises, privileges, immunities or exemptions, which shall not, upon the same terms and under like conditions, inure equally to all persons....” These provisions address comparable concerns, and require that similarly-situated persons be treated equally under the law. Therefore, unless there is a reasonable and real basis to distinguish very low-income persons in the counties specified in the bill from very low-income persons in other counties, the bill will be vulnerable to constitutional challenge on equal protection grounds.

### POSSIBLE QUESTION

Are individuals who are at poverty level considered low income or individuals eligible for food stamps or Medicaid considered low income?

BD/prr:ar:njw